

HOUSE BILL 2369

By Roach

AN ACT to amend Chapter 210 of the Acts of 1907; as amended by Chapter 151 of the Private Acts of 2000; and any other acts amendatory thereto, relative to the charter of the Town of Cumberland Gap.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 210 of the Acts of 1907; as amended by Chapter 151 of the Private Acts of 2000; and any other acts amendatory thereto, being the charter of the Town of Cumberland Gap, is amended by deleting such charter in its entirety, except for the section in which the stated boundaries of the Town are established, and by substituting the following language to be the charter of the Town of Cumberland Gap.

SECTION I GENERAL GOVERNMENT

Section 1.01 General Powers

The Town of Cumberland Gap shall have perpetual succession; may sue and be sued, may contract and be contracted with, implead and be impleaded in all the courts of law and equity, and in all actions whatsoever; may purchase, receive, and hold property, real and personal, to be used for Town purposes; may sell, lease, or dispose of such property for the benefit of the Town; and may have and use a common seal.

Section 1.02 Corporate Limits

The boundaries of the Town shall be as described in Chapter 72 of the Private Acts of 1915, as amended, or enlarged through annexation or other acquisitions.

SECTION II GOVERNING BODY

Section 2.01 Elective Officers

The officers of the Town of Cumberland Gap, to be chosen by the people, shall be a Mayor and six (6) Alderman, constituting the Board of Mayor and Alderman, or the Board, each and all of whom shall be citizens of and voters in said Town. The Board of Mayor and Alderman shall be chosen by the registered and voting citizens of such Town, and they shall hold their offices for a term of four (4) years, and until their successors are elected and qualified. Elected officers begin their term of office at the next regularly scheduled Board of Mayor and Alderman meeting following the certification of the elections. No person shall be an Alderman or Mayor unless such person is at the time of election, and has been for six (6) months preceding, a bona fide resident of such Town. Any member of the Board of Mayor and Alderman moving outside of Town limits after such member's election shall thereby vacate such member's office.

Section 2.02 Elections

The date of the Town election shall be every two (2) years on the first Tuesday after the first Monday in November of even-numbered years, such date coinciding with the General State Election. The Mayor is elected, with the four-year election cycle beginning in 2000. The Alderman candidates with the three highest amounts of votes are elected as Alderman. In the event of a tie among the Mayor or Alderman candidates, the tie may be decided by a roll call vote of the members of the certified elected board members at the first regularly scheduled meeting following the election, or, in the alternative, the board may by resolution call for a run-off election between the tied candidates.

Section 2.03 Voter Qualifications

The following shall be the qualifications for voting in Town elections:

- (1) Each elector shall be qualified to vote for State and County offices; and
- (2) Each elector shall be a resident of Cumberland Gap.

Section 2.04 State Election Laws to Apply

The persons appointed to hold the elections shall be sworn and qualified according to the election laws of this State, and such elections shall be conducted in all respects as are all the various State and County elections by virtue of the election laws of this State.

Section 2.05 Quorum

A majority of the Board (a minimum of four (4) Aldermen) shall constitute a quorum to do business. The Mayor's presence is not counted for quorum purposes.

Section 2.06 Vacancy in the Office of Board of Alderman

If any of the Aldermen of the Town should die, resign, move out of the Town limits, or otherwise vacate their office, the vacancy thus created shall be filled by the Board at its next meeting or as soon thereafter as possible. If less than two (2) years remain in the vacant term of office then the Board shall fill the vacancy by appointment. If more than two (2) years remain in the vacant term of office then the Board shall fill the vacancy by appointment until the next regularly scheduled Town election, at which time a successor shall be elected to fill the remaining two (2) years in the term of office. The Board may choose to appoint the next highest vote getter in the latest biennial election to fill the alderman vacancy. The person or persons appointed or elected to fill a vacancy in office shall perform the same duties and be vested with the same powers and privileges as the person whose duties they are appointed to fill.

Section 2.07 Oath of Office

The Mayor and Alderman of the Town shall respectively take an oath before entering upon the duties of their offices to execute the same faithfully and impartially; and the Mayor and Alderman shall also take an oath to support the Constitution of the United States and the State of Tennessee. The oath shall be as follows:

I, _____ do solemnly swear that I will support the Constitution of the United States and the State of Tennessee; the ordinances and codes of the Town of Cumberland Gap and the laws of the State of Tennessee and the United States and

will execute the duties of Alderman, or Mayor, of the Town of Cumberland Gap, to which I have been elected without prejudice, partiality, or favor, to the best of my skill and ability; and that I further swear that I will perform with fidelity the duties of the office to which I have been elected and which I am about to assume. So help me God.

Section 2.08 Mayor

It shall be the duty of the Mayor to preside at all meetings of the Board of Mayor and Alderman. Unless otherwise designated by the Board by ordinance, the Mayor shall have authority to employ, promote and discipline (excluding suspension and discharge) employees. In addition, the Mayor may suspend and discharge all employees subject to the ratification of the majority of the Board at a meeting no later than ten (10) days after such action.

The Mayor shall vote in cases where there is a tie vote. All ordinances or resolutions shall be approved and signed by the Mayor on or before the next meeting of the Board of Mayor and Alderman, and the Mayor shall have veto power. If the Mayor should refuse to approve any ordinance or resolution the Mayor shall return same to the Board of Mayor and Alderman at its next meeting, with the reasons for refusal in writing; and in such case such ordinance or resolution shall not be valid unless the Board by a two-thirds (2/3) vote pass the same over the Mayor's veto; but if the Mayor does not veto same as provided, it shall be valid without the Mayor's signature.

The Mayor shall also take care that all the ordinances of the Town are duly enforced, respected, and observed within the Town limits; and shall perform such other duties as the Board may by ordinance or otherwise impose.

The Mayor shall sign and execute contracts for the Town of Cumberland Gap after approval of said contracts by the Board.

Section 2.09 Vice Mayor

At the first meeting when the newly elected Board of Mayor and Alderman have taken office following each biennial election, the Board shall appoint from its membership a Vice

Mayor for a term of two (2) years. The Board may appoint the alderman with the highest number of votes in the latest biennial election as vice mayor. The Vice Mayor shall perform the duties of Mayor during the Mayor's absence or inability to act. If less than two (2) years remain in the Mayor's term of office then the Vice Mayor shall fill any remainder of the term. If more than two (2) years remain in the Mayor's term of office then the Vice Mayor shall fill the vacancy until the next regularly scheduled Town election, at which time a successor shall be elected to fill the remaining two (2) years in the term of office. By accepting the appointment of Vice Mayor, the alderman acknowledges that in the event the alderman must complete the Mayor's unexpired term that the alderman surrenders the remainder of the alderman's original term of office as Alderman. The Vice Mayor, acting as Mayor, may only vote in a tie.

Section 2.10 Board of Mayor and Alderman Meetings

The Board of Mayor and Alderman shall meet at least once per month in a regularly scheduled meeting. The date and time of the meetings may be established and amended by ordinance.

Special called meetings may be called by either the Mayor or by the Vice Mayor who attest in writing to the need of such a meeting.

Section 2.11 Ordinances

All ordinances shall begin with the clause, *Be it enacted by the Board of Mayor and Alderman of the Town of Cumberland Gap, Tennessee*, and shall be introduced in writing. Each ordinance shall be passed on two readings at a regular or special called meeting.

After passage, each ordinance shall be authenticated by the Mayor and signed by the Recorder. All ordinances shall be in effect immediately upon the mayor's signature or by an override of a mayoral veto. Ordinance captions may be printed in a newspaper of general circulation after passage of ordinances.

Section 2.12 Compensation

The Board may determine the annual salaries of the mayor and alderman by ordinance, but no ordinance increasing or decreasing such salaries shall become effective until the date of commencement of the terms of Alderman or Mayor elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months. The Board of Mayor and Alderman shall receive their actual and necessary expenses incurred in the performance of their duties of office.

Section 2.13 Ouster

Any alderman or mayor may be removed for the causes and in the manner provided by the general ouster laws of the state.

SECTION III GENERAL ORDINANCE POWERS

Section 3.01 General Ordinance Powers Enumerated.

The Board of Mayor and Alderman shall have power within the Town, to:

(1) Assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation, and privileges taxable by law for State, County or Town purposes;

(2) Adopt classifications of the subjects and objects of taxation that are not contrary to law;

(3) Make special assessments for local improvements;

(4) Contract and be contracted with;

(5) Incur debts by borrowing money or otherwise, and give any appropriate evidence thereof, in the manner hereinafter provided;

(6) Issue and give, sell, pledge or in any manner dispose of, negotiable or nonnegotiable interest-bearing or noninterest-bearing bonds in accordance with Tennessee Code Annotated, Title 9, Chapter 21, warrants, promissory notes or orders of the Town, upon the credit of the Town or solely upon the credit of specific property owned by the Town or solely upon the credit of income derived from any property used in connection with any public utility owned or operated by the Town, or solely upon the

credit of the proceeds of special assessments for local improvements, or upon any two (2) or more such credits;

(7) Expend the money of the Town for all lawful purposes;

(8) Acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein, within or without the Town or State:

(9) Condemn property or any easement, interest, or estate or use therein, either within or without the Town, for present or future public use; the condemnation shall be effected in accordance with the terms and provisions of state law, or in any other manner provided by law;

(10) Take and hold property within or without the Town or State upon trust; and administrator trusts for the public benefit;

(11) Acquire, construct, own, operate, and maintain, or sell, lease, mortgage, pledge or otherwise dispose of public utilities or any estate or interest therein, or any other utility of service to the Town, its inhabitants, or any part thereof. and, further, may issue debt for these purposes under the state law;

(12) Grant to any person, firm, association or corporation (including the Town) franchises for public utilities and public services to be furnished the Town and those therein. The power to grant franchises embraces the power to grant exclusive franchises. Whenever an exclusive franchise is granted, it shall be exclusive not only as against any other person, firm, association, or corporation, but also against the Town itself. Franchises may be granted for a period of twenty-five (25) years or less, but not longer. The Board of Mayor and Alderman may prescribe in each grant of a franchise, the rate, fares, charges and regulations that may be made by the grantee of the franchise in accordance with state and federal law. Franchises may by their terms apply to the territory within the Town limits at the date of the franchises, and as the Town limits may be enlarged, and to the existing streets, alleys and thoroughfares that thereafter may be opened;

(13) Make contracts with any person, firm, association or corporation for public utilities, public services to be furnished the Town and those therein. The power to make contracts embraces the power to make exclusive contracts. When an exclusive contract is entered into, it shall be exclusive against any other person, firm, association or corporation. These contracts may be entered into for a period of twenty-five (25) years or less, but not longer. The Board of Mayor and Alderman may prescribe in each such contract entered into the rates, fares, charges, and regulations that may be made by the person, firm, association or corporation with whom the contract is made. Such contracts may by their terms apply to the territory within the Town limits of the Town at the date of the contract, and as the Town limits may be enlarged, and to the then existing streets, alleys and thoroughfares and to any other streets, alleys and other thoroughfares that thereafter may be opened;

(14) Prescribe reasonable regulations regarding the construction, maintenance, equipment, operation and service of public utilities, compel reasonable extensions of facilities for these services, and assess fees for the use of or impact upon these services. Nothing herein shall be construed to permit the alteration or impairment of any of the terms or provisions of any exclusive franchise granted or of any exclusive contract entered into under subdivisions (12) and (13);

(15) Establish, open, relocate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle and clean public highways, streets, boulevards, parkways, sidewalks, alleys, parks, public grounds, public facilities, libraries and squares, wharves, bridges, viaducts, subways, tunnels, sewers and drains within or without the Town limits, regulate their use within the Town limits, assess fees for the use of or impact upon such property and facilities, and take and appropriate property therefore under the provisions of state law or any other manner provided by general law;

(16) Construct, improve, reconstruct and reimprove by opening, extending, widening, grading, curbing, guttering, paving, graveling, macadamizing, draining or otherwise improving any streets, highways, avenues, alleys or other public places within the Town limits, and assess a portion of the cost of these improvements on the property

abutting on or adjacent to these streets, highways, avenues or alleys under, and as provided by, state law or any other manner provided by general law;

(17) Assess against abutting property within the Town limits the cost of planting shade trees, removing from sidewalks all accumulations of snow, ice, and earth, cutting and removing obnoxious weeds and rubbish, street lighting, street sweeping, street sprinkling, street flushing, and street oiling, the cleaning and rendering sanitary or removal, abolishing, and prohibiting of closets and privies, in such manner as they may be provided by general law or by ordinance of the Board of Mayor and Alderman;

(18) Acquire, purchase, provide for, construct, regulate and maintain and do all things relating to all marketplaces, public buildings, bridges, sewers and other structures, works and improvements;

(19) Collect and dispose of drainage, sewage, ashes, garbage, refuse or other waste, or license and regulate their collection and disposal, and the cost of collection, regulation, or disposal may be funded by taxation, special assessment to the property owner, user fees or other charges;

(20) License and regulate all persons, firms, corporations, companies and associations engaged in any business, occupation, calling, profession or trade not prohibited by law;

(21) Impose a license tax upon any animal, thing, business, vocation, pursuit, privilege or calling not prohibited by law;

(22) Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, occupations, callings, trades, use of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the Town, and exercise general police powers;

(23) Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained;

(24) Unless inspected, tested measured and weighed by the State or federal government, inspect, test, measure and weigh any article for consumption or use within the Town, and charge reasonable fees therefore, and provide standards of weights, tests and measures in accordance with the requirements established by general law;

(25) Regulate the location, bulk, occupancy, area, lot, location, height, construction and materials of all buildings and structures in accordance with the general law, and inspect all buildings, lands and places as to their condition for health, cleanliness and safety, and when necessary prevent their use and require any alteration or changes necessary to make them healthful, clean or safe;

(26) Provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences and services;

(27) Purchase or construct, maintain and establish a Town jail for the confinement and detention of any person who in the Town court has been found guilty of violating laws within the Town, or contract with the county to keep such persons in the workhouse of the county;

(28)

(A) Enforce any ordinance, rule or regulation by fines, forfeitures, and penalties, and by other actions or proceedings in any court of competent jurisdiction;

(B) No civil penalty may exceed state-authorized maximum limits for any one (1) offense;

(29) Establish schools, determine the necessary boards, officers and teachers required therefore, and fix their compensation, purchase or otherwise acquire land for or assess a fee for use of, or impact upon, schoolhouses, playgrounds and other purposes connected with the schools, purchase or erect all necessary buildings and do all other acts necessary to establish, maintain and operate a complete educational system within the Town;

(30) Regulate tax, license or suppress the keeping or going at large of animals within the Town, impound them, and in default of redemption, sell or kill them;

(31) Call elections as herein provided; and

(32) Have and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.

SECTION IV EMPLOYEES

Section 4.01 Employees Generally

Pursuant to Section 2.08 of this charter, the Mayor has the authority to employ, promote and discipline (excluding suspension and discharge) employees. With the Board approval (ratification), the Mayor has the authority to suspend and discharge all employees. All employees report to the Mayor or the Mayor's designee.

The Mayor shall fill any employee vacancy occurring in any position (except the Town Attorney and Town Judge) provided by the Board, whether the vacancy occurs on account of death, removal, resignation or other cause.

The Board of Mayor and Alderman may determine the appropriate number of departments and employees.

The Board of Mayor and Alderman may establish city departments, offices or agencies, and may prescribe the functions of all departments, offices and agencies not inconsistent with this charter. Departments, offices and agencies created by the Board may be abolished or combined.

The Board of Mayor and Alderman shall also fix the compensation of such employees and agents.

Paid town employees are not permitted to run for Mayor or Alderman.

The Board of Mayor and Alderman may require and fix the amount of bond to be executed by the Recorder as tax collector; to require and fix the amounts of bonds of any other

employee of whom the Board may see proper to demand bond; also to pass upon the validity and sufficiency of all such bonds and solvency and sufficiency of the securities thereon.

Section 4.02 Town Attorney

The Town Attorney shall be an attorney-at-law entitled to practice in the courts of the State of Tennessee. The Town Attorney's compensation shall be fixed by the Board of Mayor and Alderman and such attorney shall serve at the will of the Board. Unlike other employees, the Town Attorney shall be appointed by the Board of Mayor and Alderman. The Town Attorney shall direct management of all litigation in which the Town is a party or interested, or in which any of its officers is officially interested; attend meetings of the Board of Mayor and Alderman as requested; advise the Board and committees and members thereof, heads of all departments and divisions as to all legal questions affecting the city interests; and approve as to form all documents, deeds, bonds, ordinances, resolutions and other documents to be signed in the name of or made by or with, the Town.

SECTION V FINANCE

Section 5.01 Fiscal Year

The fiscal year of the city shall begin on the first day of July and end on the last day of June.

Section 5.02 Accounting records and audits

There shall be installed and maintained adequate accounting records in accordance with generally accepted principles of municipal accounting. The same account titles shall be used throughout the accounting records, the budget and financial statements. Constant and comprehensive budgetary control shall be maintained. An audit of the financial affairs of the city shall be required by action of the Board of Mayor and Alderman and the same be made after the end of each fiscal year by a public accountant skilled in such works.

SECTION VI TAXATION

Section 6.01 Assessment & Collection of Taxes.

The Recorder shall receive receipt for, and be the custodian of all the moneys of the Town received from any source whatever. The Recorder shall receive all of the taxes, fines, and other moneys belonging to the Town from all sources, and shall make settlement for same, and pay out all sums ordered paid by the Mayor under the directions and orders of the Board, and for this and other purposes the Recorder shall be the bookkeeper of the Town, and shall keep such accounting records as the Board may direct. The Recorder shall make as many reports and statements monthly or quarterly as the Board may direct. The Recorder shall give bond, with good sureties, payable to the Board of Mayor and Alderman of the Town of Cumberland Gap for the faithful discharge of the duties of office, and shall perform such other duties as the Board may direct. The Recorder shall prepare each year, as soon as the State and County books are completed, a tax book embracing all property, real and personal, within the Town limits subject to taxation under the laws of the State, observing in making said assessments the values fixed by the Tax Assessor of Claiborne County; and the Recorder is hereby vested with the powers conferred by law on the collectors of State and County taxes to collect same, and lands shall be condemned and sold for failure to pay taxes in accordance with the laws of the State. The Board of Mayor and Alderman shall authorize the Recorder to collect delinquent or back taxes in the manner provided in general law. The Recorder shall issue all licenses for privileges and collect all privileges and ad valorem taxes growing out thereof. The Recorder shall record and keep the minutes of the Board of Mayor and Alderman.

SECTION VII COURT

Section 7.01 Town Court.

A Town Court is hereby established and granted jurisdiction over all infractions of municipal ordinances of the Town of Cumberland Gap, in accordance with general law.

Section 7.02 Town Judge

The Town Judge shall be appointed by the Board of Mayor and Alderman at the first regular meeting in January following the regular Town election in November of each even-numbered year and shall serve until the first regular meeting in January following the next general Town election or until a successor is appointed and has taken the oath of office. Qualifications for the Town Judge shall be established by ordinance by the Board. The Town Judge shall be eligible for reappointment. The Judge shall take the same oath required of the Board of Mayor and Alderman. The Board shall establish the compensation of the Town Judge by ordinance. The Town Judge shall not be eligible to hold elective offices for the Town of Cumberland Gap. If the Town Judge is either, from absence or inability to act, disqualified from sitting in any particular case, the Mayor is authorized to appoint a temporary Judge for a definite time or a particular case, and such person shall have all the powers of the Judge for the term or purpose appointed.

Section 7.03 Judge's Responsibilities

The Town Judge shall try all persons charged with violation of the ordinances of the Town. The Judge shall have the power to levy fines, civil penalties and forfeitures in accordance with such offense and to impose such costs as the Board of Mayor and Alderman may by ordinance provide, to issue all necessary process, to administer oaths, and to punish for civil contempt. The Town Judge shall be the exclusive judge of the law and facts in every case before such judge, and no official or employee of the Town shall attempt to influence the Judge's decision except through pertinent facts presented in court. These provisions are all subject to state law regarding the jurisdiction and authority of municipal courts and judges.

SECTION VIII MISCELLANEOUS

Section 8.01 Gender

Whenever, in this Charter, "man, men, him, his, he," or their related pronouns may appear either as words or as parts of words, they have been used for literary purposes and are meant

in their generic sense "i.e., to include all human kind, both female and male sexes.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the Town of Cumberland Gap. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

SECTION 4. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 3.